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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,579	11/26/2003	Mitchell Clark Voges	38213.00011.CIP1	5674
36183	7590	08/12/2004	EXAMINER	
PAUL, HASTINGS, JANOFSKY & WALKER LLP P.O. BOX 919092 SAN DIEGO, CA 92191-9092			BLAU, STEPHEN LUTHER	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/722,579	VOGES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Stephen L. Blau	3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 July 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-40 is/are rejected.

7)  Claim(s) 8 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 26 November 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_ .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_ .

## DETAILED ACTION

### ***Claim Objections***

1. Claim 8 is objected to because of the following informalities: The term "park deflection" in lines 1-2 do not make sense. Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to because figures 7-13 are blurred. The examiner is unable to differentiate what is being described in these drawings. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by

the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 40 is indefinite in that it requires a plurality of transmitters each coupled to one of a plurality of strain gauges yet the claim it depends on requires the transmitter to be coupled to each of a plurality of strain gauges. In claim 40 it is uncertain if one transmitter is coupled to all the strain gauges or if each strain gauge has its own transmitter.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6, 9, 14, 17, 22-23, 25-26, 31, and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammond.

Hammond discloses a method and a system comprising receiving swing data over a wireless communications link (Fig. 1), using swing data to derive swing parameters (Col. 2, Lns. 43-47) using a shaft module in the form of a computer (Ref. No. 38), a swing data collection system in the form of a memory (Ref. No. 34), a strain gauge sensing shaft deflection coupled to a transmitter (Col. 2, Lns. 50-55), a display (Ref. No. 44), a method of using this swing data to fit a golfer with golf equipment (Col. 4, Lns. 6-10), and a strain gauge and wireless transmitter comprise a single device in the form of a plurality of wireless transmitters each coupled with to one of a plurality of strain gauges and each transmitter transmitting different frequencies (Col. 2, Lns. 50-60).

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-5, 7-8, 10-13, 15-16, 20, 27-30, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Naruo.

Hammond disclosing using strain data but not how the strain data is presented.

Hammond lacks deriving a load time, a load pattern, a ramp potential and peak deflection from strain data and a graph display.

Naruo discloses strain data displayed showing a load time, a load pattern, a ramp potential and peak deflection (Fig. 25), a graph display (Fig. 25), using stain gauges on a shaft in order to detect deflection during a swing (Col. 3, Lns. 7-11) and based on the swing parameters select an optimum flex for a shaft based on the deflection (Col. 3, Lns. 4-6). In view of the patent of Naruo it would have been obvious to modify the method and system of Hammond to include deriving a load time, a load pattern, a ramp potential and peak deflection using a graph display from strain data in order to provide an optimum flex for a shaft to a golfer based on deflection of a shaft.

9. Claims 18-19 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Kawaguchi.

Hammond lacks strain gauges configured to sense the lead or lag deflection of a shaft, and tow up or down deflections for a shaft.

Kawaguchi discloses strain gauges configured to sense the lead or lag deflection (Fig. 3) and tow up or down deflections for a shaft (Fig. 4) in order to provide a shaft most suited for a golfer (Col. 1, Lns. 35-46). In view of the patent of Kawaguchi it would have been obvious to modify the method and fitting system of Hammon to have strain gauges configured to sense the lead or lag deflection and tow up or down deflections for a shaft in order to provide a shaft most suited for a golfer.

10. Claims 21, 24, 36 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of Evans.

Hammond discloses transmitters secured to a shaft (Fig. 1) and a plurality of wireless transmitters each coupled with to one of a plurality of strain gauges and each transmitter transmitting different frequencies (Col. 2, Lns. 50-60).

Hammond lacks a strap configured to secure a wireless transmitter and one transmitter. Evans discloses a strap used to secure a transmitter attached to a wrist (Fig. 1) and one transmitter (Abstract). In view of the patent of Evans it would have been obvious to modify the club of Hammond to have transmitters secured to a shaft by straps in order to use a securing mechanism used in the art for transmitters. In view of the patent of Evans it would have been obvious to modify the club of Hammond to have one transmitter in order to minimize the number of components needed for the swing data collection system.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tuer discloses a wireless link. Lee, Weber and Hackman disclose strain gauges.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Blau whose telephone number is (703) 308-2712. The examiner is available Monday through Friday from 8 a.m. to 4:30 p.m.. If the examiner is unavailable you can contact his supervisor Greg Vidovich whose telephone number is (703) 308-1513. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858. (TC 3700 Official Fax 703-872-9306)

slb/ 5 August 2004



STEPHEN BLAU  
PRIMARY EXAMINER